

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No 2368 of 1997

For Approval and Signature:

Hon'ble MR.JUSTICE M.S.PARIKH

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
2. To be referred to the Reporter or not?
3. Whether Their Lordships wish to see the fair copy of the judgement?
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
5. Whether it is to be circulated to the Civil Judge?

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STATE OF GUJARAT

Versus

ANUP ENGINEERING LTD.

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Appearance:

Ms.B.R.GAJJAR, A.G.P. for Petitioners

MR HD KARNIK for Respondent No. 1

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CORAM : MR.JUSTICE M.S.PARIKH

Date of decision: 11/08/97

ORAL JUDGEMENT

The appellants herein were the original defendants and the respondent herein was the original plaintiff, who filed Civil Suit No.2024 of 1983 for number of declarations, inter-alia, for a declaration that there has been no binding contract between the parties and that the recovery certificate in the sum of Rs.20581.20 ps. issued by the defendants is illegal and

for permanent injunction restraining the defendants from recovering the amount stated in the said Certificate and the notice of enforcement in respect thereof. The plaintiff filed the Suit inter-alia alleging that the defendant No.2 wanted to purchase one chlorine tonner for P.H. Works at Surendranagar. Necessary tenders were invited for that purpose. The plaintiff submitted the plaintiff's offer informing the defendant No.2 that the validity of the offer would be for a period of 3 months from the date of opening of the tender (15.1.1979). The plaintiff also communicated in the tender that the price was Rs.9000/- + Taxes, etc. The payments were to be 98 % of the order value and that the payments were to be made as per the particulars set out in the tender. The defendant No.2 by his letter dated 22.2.1979 communicated to the plaintiff that the tender was being accepted and necessary acceptance of the tender would be issued in due course. The defendants suggested various particulars regarding the payment and the mode of payment, inter-alia, indicating that 90 % of the invoice amount would be paid against Railway Receipt and remaining 10 % amount would be paid within 30 days of the receipt of the goods. By letter dated 11.3.1979 the plaintiff informed defendant No.2 to send the order as per the terms regarding price, etc. stated in the plaintiff's letter dated 12.1.1979, which inter-alia required payment of 98% against the documents. The defendant No.2, by sending acceptance of the tender as per communication dated 23.3.1979 in printed form, suggested various terms and conditions as also set out a schedule showing specification, etc. The condition contained in clause No.10 pertained to liquidated damages in respect of which decision of defendant No.2 was stated to be final, and also pertained to recovery of damages as arrears of land revenue, but the plaintiff by letter dated 7.4.1979 confirmed the order subject to the condition regarding price, taxes, etc., but not accepting the condition of payment of 90 % and condition as contained in Clause No.10 as aforesaid. Accordingly the matter remained at the stage of settlement of contract and the terms and conditions thereof. Ultimately defendant No.2 sent communication to the plaintiff calling upon the plaintiff to show cause why the conditions contained in Clause No.10 should not be invoked. The plaintiff replied that the plaintiff never accepted the terms and conditions, inter-alia, those contained in clause No.10 of the letter of acceptance. Still, however, the defendants called upon the plaintiff to supply goods as per their terms and conditions by sending communication dated 27.3.1980 failing which the conditions set out in clause No.10 of the letter of acceptance would be invoked. The defendant

No.2 thereafter made risk purchased inquiry and purchase goods from others and informed the plaintiff that the goods were purchased from M/s. Paresh and Co. for Rs.27,800/+ taxes and called upon the plaintiff to pay the amount of Rs.20,581/- by way of compensation to be recovered as land revenue. The Recovery Certificate was thereafter issued on 4.5.1983 for the said amount. The Recovery Mamlatdar by his notice issued in May 1983 called upon the plaintiff to pay the sum of Rs.20,805.20 ps. It was this action on the part of the defendants which came to be challenged by the plaintiff in the aforesaid Suit for declaration and injunction.

2. The Suit was heard on evidence and by Judgment and order dated 19.4.1994 relief of declaration and injunction was granted by the learned Judge of the City Civil Court, Court No.7, Ahmedabad declaring that there was no concluded contract between the parties and that clause No.10 of acceptance of tender was not enforceable at law and finally that the issuance of Recovery Certificate dated 4.5.1983 was illegal, unauthorised, arbitrary and that the Recovery Mamlatdar was restrained by permanent injunction from recovering the amount shown in the recovery Certificate.

3. The appellants have challenged this Judgment and order before this Court.

4. I have heard the learned A.G.P. Ms.Gajjar for the appellants. Mr.H.D.Karnik, learned Advocate appears for respondent - plaintiff.

5. I have gone through the communications which have been placed on the record of the trial Court. These communications have been shown by the learned A.G.P. from the file which has been kept ready for perusal by the Court. The learned trial Judge has also referred to all these communications. None of the communications would indicate unqualified acceptance either of the original offer or of the counter offer on the part of one or the other party to the offer or counter offer. The learned trial Judge has considered the whole of the correspondence for coming to the conclusion that there is no concluded contract between the parties in respect of the purchase of the aforesaid goods. That apart, referring to the decision of the Honourable Supreme Court in the case of Masum Hussain V/s. State of Madhya Pradesh, reported in A.I.R. 1981 SC 1680, the learned trial Judge has come to the conclusion that the action of the appellants (original defendants) of recovering the damages without adjudication was illegal. Having heard

the learned A.G.P. for the appellants I am convinced that there is no case for the appellant to show before the Court that either there was a concluded contract between the parties or that there was any adjudication for recovery of the amount of damages as contained in Clause No.10 of the letter of acceptance by way of arrears of land revenue. In that view of the matter this Appeal cannot be entertained and deserves to be rejected at the stage of admission.

This Appeal is accordingly rejected at the admission stage; however, it is clarified that the Judgment and order impugned in this Appeal will stand in its entirety unaffected by what is observed in this Judgment. No order as to cost.

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